

REMARKS

In response to the final Office Action dated September 8, 2008, the Assignee respectfully requests continued examination and reconsideration based on the above amendments and on the following remarks.

Claims 1-29 and 32-38 are pending in this application. Claims 30 and 31 have been canceled without prejudice or disclaimer.

Provisional Double-Patenting Rejections

The Office provisionally rejected claim 32 under 35 U.S.C. § 101 for statutory double patenting over claim 1 of co-pending U.S. Application 11/262,329 (Attorney docket 02280 CIP). When either application receives an indication of allowance, the Assignee will promptly consider a terminal disclaimer.

The Office also provisionally rejected claims 33-38 for obvious-type double patenting over claims 1-9, 13, and 15 of co-pending U.S. Application 11/262,329 (Attorney docket 02280 CIP). When either application receives an indication of allowance, the Assignee will promptly consider a terminal disclaimer.

Rejection of Claims Under § 112

The Office rejected claims 1-31 and 35 under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the enablement requirement. Claims 30 and 31 have been canceled without prejudice or disclaimer. Moreover, many of these claims have been amended, so the Office is respectfully requested to re-examine these claims in their current presentation.

Rejection of Claims 1-31 under § 103 (a)

The Office rejects claims 1-31 under 35 U.S.C. § 103 (a) as allegedly being obvious over U.S. Patent Application Publication 2003/0110489 to Gudorf, *et al.* in view of U.S. Patent 5,606,359 to Youden and further in view of U.S. Patent 6,286,042 to Hasselberg.

First, claims 30 and 31 have been canceled without prejudice or disclaimer, so the rejection of these claims is moot.

Next, claims 1-29 are not obvious over *Gudorf*, *Youden*, and *Hasselberg*. These claims recite, or incorporate, many features that are not disclosed or suggested by the combined teaching of *Gudorf*, *Youden*, and *Hasselberg*. Independent claim 1, for example, recites “*determining whether the first user command is an automatic function that is automatically locally stored in memory of the viewer appliance.*” Support for such features may be found at least in the as-filed application at page 11, line 26 through page 12, line 10. Independent claim 1 also recites “*performing a look-up when the first user command is not the automatic function*” and “*determining, in response to the look-up, whether the first user command is to be locally stored in the memory of the viewer appliance and remotely stored at a network location.*” Support for such features may be found at least in the as-filed application at page 11, line 26 through page 12, line 10. Independent claim 1 also recites “*detecting that the first user command is not to be locally stored in memory of the viewer appliance.*” Support for such features may be found at least in the as-filed application at page 12, lines 8-10. Independent claims 14, 23, and 28 recite similar features.

Gudorf, *Youden*, and *Hasselberg* do not obviate all these features. *Gudorf* discloses click stream data that is time stamped and analyzed to determine a profile. *See* U.S. Patent Application Publication 2003/0110489 to Gudorf, *et al.* at paragraphs [0009] and [0010]. The clickstream data may be analyzed locally or remotely. *See id.* at paragraph [0011]. *Youden* discusses a video server that receives a request from a set-top box. *See* U.S. Patent 5,606,359 to Youden at column 10, lines 36-39. If the user is granted access, the requested film is played. *See id.* at column 10, lines 40-45. The user is granted a “user time slot.” *Id.* at column 11, lines 20-25. If a VCR command is received, *Youden* checks of the command is a “pause” command and executed. *See id.* at column 14, lines 1-10. If not, then the command must be a fast forward,

rewind, or play command and a new “user time slot” is assigned. *See id.* at column 14, lines 19-25. *Hasselberg* describes redundancy operations.

Still, though, *Gudorf*, *Youden*, and *Hasselberg* do not obviate independent claims 1, 14, 23, and 28. The combined teaching of *Gudorf*, *Youden*, and *Hasselberg* fails to teach or suggest “*determining whether the first user command is an automatic function that is automatically locally stored in memory of the viewer appliance.*” The combined teaching of *Gudorf*, *Youden*, and *Hasselberg* also fails to teach or suggest “*performing a look-up when the first user command is not the automatic function*” and “*determining, in response to the look-up, whether the first user command is to be locally stored in the memory of the viewer appliance and remotely stored at a network location.*” The combined teaching of *Gudorf*, *Youden*, and *Hasselberg* also fails to teach or suggest “*detecting that the first user command is not to be locally stored in memory of the viewer appliance.*” Because *Gudorf*, *Youden*, and *Hasselberg* are all silent to at least these features, one of ordinary skill in the art would not think that independent claims 1, 14, 23, and 28 are obvious.

Independent claim 29 also recites distinguishing features. Independent claim 29, for example, recites “*determining whether the user command is locally executed at the viewer appliance.*” When “*the user command is locally executed, then capturing and storing the user command in memory of the viewer appliance and executing the user command at the viewer appliance.*” When “*the user command is not locally executed, then forwarding the user command to a remote network location for storage and execution.*” Support for these features may be found at least in the as-filed application at page 18, line 13 through page 19, line 6 and at FIG. 5. Because *Gudorf*, *Youden*, and *Hasselberg* are all silent to at least these features, one of ordinary skill in the art would not think that independent claim 29 is obvious.

Claims 1-29, then, are not obvious over *Gudorf*, *Youden*, and *Hasselberg*. Independent claims 1, 14, 23, 28, and 29 recite many features that are not taught or suggested by *Gudorf*, *Youden*, and *Hasselberg*. The dependent claims incorporate these same features and recite additional features. Claims 1-29, then, are not obvious, so the Office is respectfully requested to remove the § 103 (a) rejection of these claims.

Rejection of Claims 32 & 36-38 under § 103 (a)

The Office rejected claims 32 and 36-38 under 35 U.S.C. § 103 (a) as allegedly being obvious over *Gudorf* in view of *Youden*.

Claims 32 and 36-38, though, cannot be obvious over *Gudorf* and *Youden*. Independent claim 32 recites many of the distinguishing features discussed above. As the above paragraphs explained, both *Gudorf* and *Youden* fail to teach or suggest “*determining whether the first subscriber command is an automatic function that is automatically locally stored in memory of a media device*” and “*when the first subscriber command is not an automatic function that is locally stored, then performing a look-up to determine if the first subscriber command is to be locally stored in the media device.*” Because *Gudorf* and *Youden* are both silent to at least these features, one of ordinary skill in the art would not think that independent claim 32 is obvious. Dependent claims 36-38 incorporate these same features and recite additional features. Claims 32 and 36-38, then, are not obvious, so the Office is respectfully requested to remove the § 103 (a) rejection of these claims.

Rejection of Claims 33-35 under § 103 (a)

The Office rejected claims 33-35 under 35 U.S.C. § 103 (a) as allegedly being obvious over *Gudorf*, *Youden*, and *Hasselberg*. Claims 33-35, though, depend from independent claim 32 and incorporate the same distinguishing features discussed above. Because *Gudorf*, *Youden*, and *Hasselberg* are all silent to many of the features recited by independent claim 32, one of ordinary skill in the art would not think that claims 33-35 are obvious. The Office is thus respectfully requested to remove the § 103 (a) rejection of these claims.

If any questions arise, the Office is requested to contact the undersigned at (919) 387-6907 or scott@scottzimmerman.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. P. Zimmerman", with a stylized flourish at the end.

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